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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 635

NATIONAL BUS TRAFFIC ASSOCIATION, INC., ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States of America and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from a three-judge district court's judgment dismissing appellants' complaint. The complaint sought to enjoin and set aside the Commission's order in *Ernest Keller, Jr., Common Carrier Application,* 94 M.C.C. 238 (J.S. App. B).

795-330—65

Keller, who "owns and operates two 60-passenger buses with which, under contract with the Charles County Board of Education, he provides daily transportation for schoolchildren between their homes and schools at or near Hughesville and Waldorf, Md." (J.S. 3a–4a), requested the Interstate Commerce Commission to grant him authority to charter his vehicles to the Board of Education for trips during the school year to Washington, D.C., for educational purposes, the vehicles to carry only school children and teachers travelling as a group, although they would pick up and discharge the children "along the normal school-bus route as well as at the school building itself" (J.S. 4a). The entire Commission, affirming Division 1 (J.S. 2a, 10a), held that no certificate of public convenience and necessity was required for this use of Keller's school buses because the described operation was within the exemption of Section 203(b)(1) of the Interstate Commerce Act (49 U.S.C. § 303(b)(1)), which provides that schoolbus operators "employed solely in transporting school children and teachers to or from school" need not obtain certificates of public convenience and necessity or file tariffs.[1]

The Commission (J.S. 5a) rejected the contention that the exemption is limited to transportation between the school *building* and points located along the normal route of the school bus, noting that when the word "school" refers to a building it is generally preceded by an article or descriptive adjective and

[1] The section also provides, however, that the Commission shall have full authority to regulate the safety of such operations, as in the case of certificated operations.

that when it appears without such an adjective it is more likely to mean something different, *e.g.*, a body of students, a period or session of teaching, or the process of formal education itself. The Commission pointed out that if the narrow construction of the term "school" was adopted, Keller's proposed operations would still be exempt if he picked the children up and returned them to the school building, for the statute requires only that the transportation be "to or from school." The Commission declined to adopt a construction that would require such artificial routing and would preclude the applicant from picking up and delivering children along the normal schoolbus route. Observing that "schooling today encompasses an area broader than mere classroom instruction," and that "school-sponsored, educational trips" frequently provide "firsthand knowledge and experience of what are properly subjects of classroom instruction" (J.S. 5a), the Commission pointed out that to read "school" narrowly would bar schoolbus operators, "who are experienced in the day-to-day transportation of the very children involved" (J.S. 5a), from carrying on a service that the school authorities would naturally look to them to provide.

In response to the further argument that a broad reading of "school" would be inconsistent with a number of its earlier decisions dealing with the transportation of school children, the Commission noted that most of the prior cases were clearly distinguishable (J.S. 6a–7a) and, indeed, that except in one case, *Van Galder Common Carrier Application*, 53 M.C.C. 816 (J.S. 14a–23a), the issue had not even been dis-

cussed (J.S. 7a). With respect to *Van Galder*, the Commission noted a factual distinctions, and also pointed out that the interpretation of Section 203(b)(1) that it was now adopting corresponded closely to that urged to the applicant in *Van Galder* by its staff in 1949. To the extent that any of the prior cases might be inconsistent with its present ruling, the Commission declared them overruled.

Appellants, bus companies which had intervened before the Commission, brought the present action before a three-judge district court to set aside the Commission's report and order. The court dismissed their complaint *per curiam*, adopting the Commission's findings of fact and conclusions of law (J.S. App. A).

ARGUMENT

The decision of the district court is clearly correct, and plenary consideration by this Court is not warranted. Accordingly, the judgment below should be affirmed.

1. Appellants' basic argument is that the terms of the statutory exemption for school buses carrying children and teachers "to or from school" are so clear that they leave no room for the Commission to construe the provision in accordance with practical good sense and sound administrative judgment and policy. But the Commission's observation that the word "school" can reasonably mean, for example, "a period or session of teaching" (J.S. 5a) seems obviously correct as a matter of common usage. Appellants present no reasoned challenge to this construction (J.S. 10–11). With no legislative history to suggest that Congress intended

the term to be narrowly limited to a particular set of buildings, no reason appears why the Commission's construction should be overturned. Where a local school board has decided that on certain days the formal education of students shall be conducted at sites other than the usual school buildings, it requires no stretching of the language to hold that on such occasions "school" is being held at such places. That is all the Commission here held. The Commission's conclusions that appellants' construction (1) would effectively deprive school authorities of the choice of using "schoolbus operators who are experienced in the day-to-day transportation of the very children involved and who are the natural persons to whom the school authorities would also look to provide service on special occasions" (J.S. 5a–6a) and (2) "would create regulatory problems for the schools, the schoolbus operators, and this Commission without really benefiting the certificated passenger carriers" (J.S. 6a) are not challenged by appellants. Reflecting as they do the Commission's practical experience with this subject and its responsibility for the administration and enforcement of the Act, these conclusions are entitled to great weight. *Levinson* v. *Spector Motor Co.*, 330 U.S. 649, 672.

2. Appellants contend that because of prior cases in which Divisions of the Commission assumed, generally without any discussion, that schoolbus operators are subject to the certificate and permit requirements of the Act, the Commission is now precluded from adopting a broader construction of the exemption provision. But it is precisely the Commission's

prior experience with this problem that most cogently justifies its present ruling—in this, the first case in which the entire Commission has considered the problem—that a narrow construction of the exemption is contrary to the public interest. The Commission's practical experience has shown that local school authorities quite properly look to the schoolbus operators, who are experienced in the day-to-day transportation of the school children, to bus the children for special educational trips and that this preference would be frustrated by requiring certificates of public convenience and necessity in such cases. The complexity of certification proceedings would discourage the small schoolbus operator and the small school system from applying, and thereby defeat the preferences of the school authorities.

3. Appellants argue finally that the Commission's ruling could apply to trips "only remotely connected" with the regular curriculum, and to "sightseeing trips over extended distances and periods of time" and various other types of travel (J.S. 18–19). This case presents no such issue; the contemplated trips are expressly and exclusively for educational purposes.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted.

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